

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
)	
)	
v.)	No. 08 CR 5
)	
PATRICK MCKIBBINS)	Judge Gettleman
)	
Defendant.)	
)	

MOTION TO SUPPRESS STATEMENTS

The Defendant, Patrick McKibbins, by and through his attorney, Bart E. Beals, moves this Court to suppress statements made by McKibbins to the government on January 3, 2008, pursuant to Federal Rules of Criminal Procedure 41(h) and 12(b)(3) as a result of a violation of the Fifth and Sixth Amendments. In support thereof, Defendant states as follows:

Facts

Mr. McKibbins was arrested in Illinois on January 3, 2008 by officers from the Winfield Police Department. See Exhibit A. Mr. McKibbins was taken into in the parking lot of Wynwood Park on January 3, 2008 at around 6:05 p.m. Id. Although McKibbins had been taken into custody, he was not read his Miranda rights and officially placed under arrest until after he was taken to an interview room and questioned. Id.

Argument

A defendant has a right to a warning from the government that he/she has a right to counsel and/or to remain silent once he/she has been taken into custody. *Miranda v. Arizona*, 384 U.S. 436 (1966). This right stems from the right against self incrimination

and the right to counsel. *Id.* This right attaches once the defendant has been taken into custody. *Id.* For the purposes of *Miranda*, a defendant is in custody when his/her freedom is deprived in “any significant way.” *Id.* at 444. The test for whether a defendant was in custody is whether a reasonable person would feel that he/she had the ability to terminate the interview and leave. *A.M. v. Butler*, 360 F.3d 787, 796 (7th Cir. 2004).

A review of the police report provided by the government demonstrates that once Mr. McKibbins was taken into custody his *Miranda* rights attached. McKibbins “was taken into custody by the officers” and later taken to an interview room. See Exhibit A. After Mr. McKibbins was taken into custody he made statements. Also according to the Report, Mr. McKibbins was not given his *Miranda* warning until after he was taken into an interview room and questioned.

WHEREFORE, Defendant moves for the statements that he made on January 3, 2008 are suppressed.

Respectfully submitted,

/s/ Bart E. Beals

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